

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF SAN BERNARDINO AND THE [insert name of  
agency] REGARDING THE SAN BERNARDINO COUNTY REPLACEMENT  
BENEFITS PLAN**

WHEREAS, retirement benefits are provided to employees of San Bernardino County ("County") and [insert name of agency] ("District") by the San Bernardino County Employees' Retirement Association ("SBCERA"), and

WHEREAS, the amount of benefits that can be provided to SBCERA members is limited by Section 415(b) of the Internal Revenue Code ("Code"), and

WHEREAS, the Code also explicitly provides that an employer can establish a replacement benefits plan for SBCERA members whose benefits are limited by Section 415(b) in order to replace the retirement benefits that cannot be paid by SBCERA, and

WHEREAS, such a replacement benefits plan is used by many other entities, in both the private and public sector, to replace benefits limited by section 415(b), and

WHEREAS, it would be to the benefit of the District's employees to ensure that all of its members receive the entire retirement benefits which they would earn under SBCERA but for the limits of the Code, and

WHEREAS, the most efficient way for the District to provide replacement benefits is to participate in a replacement benefits plan that is established by the County, sharing the cost thereof, and

WHEREAS, it is appropriate for the County and the District to enter into a memorandum of understanding setting out the responsibilities of the County and the District with respect to such a plan, and

WHEREAS, the County has provided to the District the County's Replacement Benefits Plan, and the memorandum of understanding between the County and SBCERA, a copy of each which is attached to hereto.

THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE COUNTY OF SAN BERNARDINO ("County") AND (insert name of district) ("District") AS FOLLOWS:

1. District Is Bound By The Terms And Conditions Of The Plan

(a) This memorandum of understanding ("MOU") is entered into by the County and District in order to facilitate the efficient operation by the County of a replacement benefits plan ("Plan") that will provide benefits to retired SBCERA members who were employees of the District and whose benefits are limited by Section 415(b) of the Internal Revenue Code ("Code").

(b) The District agrees to participate in and sponsor the Plan and to be bound by all of the terms and conditions of the Plan, without limitation.

## 2. Payment of Replacement Benefits

(a) In accordance with the Plan, the County shall pay to affected retired members of SBCERA, and to their surviving beneficiaries (if any), who were employees of the District the difference between the benefits that would be payable from SBCERA without regard to the limits of Section 415(b) of the Code and the benefits that can be paid by SBCERA without violating Section 415(b). These benefits are called "replacement benefits".

(b) The County shall pay replacement benefits from payments made to the County by District in accordance with section 3 hereof, which payments shall be held by the County as its general assets. No assets of SBCERA shall be used to pay replacement benefits and no assets of SBCERA shall be used to pay the cost of administration or any other costs regarding the operation of the Plan.

(c) No benefits shall be owed or paid under this Plan to any former District employee or to any person who may claim benefits with respect to benefits earned by such an employee unless and until the District has paid to the County the amount that the County has invoiced the District as provided in Section 3 below.

(d) All payments made by the County under the Plan for or on behalf of retired employees of the District shall be made in the capacity of agent for the District.

## 3. Payments By The District To The County

(a) As soon as practicable after SBCERA provides the County with necessary and appropriate information, for any year, concerning the amount and timing of replacement benefits payable to former employees of the District under the Plan, the County shall invoice the District for the amount of replacement benefits payable by the County as agent of the District for that year. At the same time, the County shall invoice the District for its proportionate share of the County's cost of administering the Plan and taxes (if any) that may be due on the payment of replacement benefits. (The proportionate share of administrative costs shall be determined on the basis of the number of people receiving benefits under the Plan during the year.)

(b) To the extent that the amount of replacement benefits payable by the County as agent of the District increases during any year, the County shall invoice the District for such additional amounts as soon as practicable after receiving the necessary information from SBCERA with respect to the affected individuals, amounts and timing of payment of such replacement benefits.

(c) To the extent that the amount of replacement benefits payable by the County as agent of the District is less during any year than has been paid by the District to the County, the County shall retain any excess for replacement benefit payments and costs during the following year.

(d) The amount of any invoice from the County shall be paid by the District to the County no later than the date set out in the invoice.

(e) The District shall immediately pay to the County any amounts that the County invoices the District for taxes (above the amounts set out in paragraph (a) hereof) due with respect to the payment of benefits under the Plan.

(f) The County shall hold all amounts received from the District as part of its general assets. The District shall not have any property interest, preferred claims, liens or any other beneficial interest whatsoever in any assets of the County, and shall have only general creditor status with respect to the County. Further, no retired member nor any other person who may be entitled to benefits under the Plan shall have any property interest, preferred claims, liens or any other beneficial interest whatsoever in any assets of the County or District, and shall have only general creditor status with respect to the County and District.

#### 4. District Contributions to SBCERA

The County and SBCERA have entered into a memorandum of understanding with respect to certain operational aspects of the Plan. (A copy of that memorandum is attached hereto.) Under that memorandum, and to take account of the payment of replacement benefits, SBCERA shall adjust the contributions of the District to SBCERA in accordance with the recommendations of SBCERA's actuary. The District explicitly acknowledges that the County has no responsibility whatsoever with respect to any such adjustment, and that it is the responsibility of the District to agree with SBCERA on the amount of any such adjustment.

#### 5. Information

(a) The District shall provide the County with all necessary or appropriate information requested by the County and related to the operation of the Plan.

(b) The County, as Plan Administrator, shall provide information to all persons receiving benefits under the Plan with respect to the general operation of the Plan and the amount and timing of benefits payable thereunder.

(c) The County shall provide the District, annually, with a report on the amounts paid under the Plan to retired members of SBCERA who were employees of the District and to their surviving beneficiaries (if any).

#### 6. Taxes

The District designates the County, as Plan Administrator, as the agent of the District for purposes of paying taxes and filing such forms and returns as are required by the Internal Revenue Service and any other tax agency. The District will execute and files such forms and other documents as are deemed necessary or appropriate by the Plan Administrator in connection with this designation.

## 7. Plan Administration

The District acknowledges that the County is the Plan Administrator and that it has the sole authority and discretion to determine the benefits due under the Plan and to interpret the Plan provisions. To the maximum extent allowed by law, the Plan Administrator's interpretations, determinations, rules, and calculations shall be conclusive, final and binding on the District, all Participants and Eligible Survivors and any and all other persons claiming any rights under the Plan.

## 8. Withdrawal

(a) The voluntary or involuntary withdrawal of the District from the Plan shall be governed by the terms and conditions in the Plan.

(b) In the case of an involuntary withdrawal from the Plan by the District as provided for in the Plan, the District shall pay to the County a reasonable withdrawal fee as determined by the Plan Administrator.

(c) In addition to the voluntary and mandatory withdrawal provisions in the Plan, the County may, at any time and for its convenience, terminate this memorandum of understanding with District. Termination shall be on written notice given by the County to District at least thirty (30) days before the date of termination stated in the notice. Termination of this memorandum of understanding in accordance with this section 8(c) shall be deemed to be a valid and effective voluntary withdrawal of District from the Plan governed by section 5.3 of the Plan and shall be subject to all of the effects and consequences of a voluntary withdrawal by the District as provided in the Plan.

## 9. Indemnification and Security

(a) The District will indemnify and hold harmless the County and all other Districts that participate in and sponsor the Plan from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses including (without limitation) reasonable attorneys fees, arising out of (directly or indirectly) or resulting from the District's participation in the Plan, withdrawal from the Plan and claims made by or with respect to any former employee of District or any person claiming benefits as a survivor of, or with respect to, any such employee.

(b) At the sole discretion of the County, the District will provide security, that the County deems sufficient, to provide for the payment of any and all direct or indirect liabilities, demands, claims, losses, costs and expenses including (without limitation) reasonable attorneys fees, that may be suffered by the County and all other Districts that participate in this arising out of (directly or indirectly) or resulting from the District's withdrawal from this Plan.

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10. Miscellaneous

(a) Integration.

This Memorandum of Understanding and the documents referenced herein constitute the entire agreement of the parties with respect to the subject matter hereof and supercede all prior agreements and understandings, both written and oral.

(b) Amendment

This Memorandum of Understanding may only be amended pursuant to a written agreement executed by both parties hereto.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN ENTERED INTO AS OF  
THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

COUNTY OF SAN BERNARDINO

[Insert name of agency]

\_\_\_\_\_  
DENNIS HANSBERGER, Chairman

\_\_\_\_\_  
[Insert name and title]

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD

J. RENEÉ BASTIAN, Clerk of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

DATED: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ALAN K. MARKS, County Counsel

By: \_\_\_\_\_  
RUTH E. STRINGER  
Chief Deputy County Counsel  
Attorneys for County of San Bernardino

DATED: \_\_\_\_\_